

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc.     )  
(VELCO) and Green Mountain Power Corporation     )  
(GMP) for a certificate of public good, pursuant to 30     )  
V.S.A. Section 248, authorizing VELCO to construct     )  
the so-called Northwest Vermont Reliability Project,     )  
said project to include: (1) upgrades at 12 existing     )  
VELCO and GMP substations located in Charlotte,     )  
Essex, Hartford, New Haven, North Ferrisburgh,     )  
Poultney, Shelburne, South Burlington, Vergennes,     )  
West Rutland, Williamstown, and Williston,     )  
Vermont; (2) the construction of a new 345 kV     )  
transmission line from West Rutland to New Haven;     )  
(3) the reconstruction of a portion of a 34.5 kV and 46     )  
kV transmission line from New Haven to South     )  
Burlington; and (4) the reconductoring of a 115 kV     )  
transmission line from Williamstown to Barre,     )  
Vermont –     )

Order entered: 11/10/2005

**ORDER RE VELCO REQUEST FOR WAIVER OF COMMENT PERIOD ON PERMITS  
AND NOTICE OF HEARING CANCELLATION**

**Introduction**

On October 18, 2005, Vermont Electric Power Company, Inc. ("VELCO") filed a petition, pursuant to 30 V.S.A. § 248(k), seeking (1) a waiver of the default four-week comment period on permits for the 345 kV transmission line and the New Haven substation,<sup>1</sup> and (2) authorization to begin site preparation and construction of those facilities upon receipt of all required permits (the "October 18 Petition"). In the alternative, VELCO proposes that it provide the permit applications to the Public Service Board ("Board") and the parties, and that if, upon review, no party or member of the public indicates that it wishes to comment on a permit, the comment period on that permit be waived.

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1. The default four-week comment period was established by Order dated July 6, 2005.

VELCO seeks such relief due to the timing of expected permit issuances and seasonal construction limitations. Without relief, VELCO represents that the New Haven substation may be delayed by three to six months, and the 345 kV line may be delayed beyond its target in-service date (end of 2006). Such delays, VELCO asserts, would expose Vermont to possible system outages.

On October 24, 2005, the Board issued a notice of a preliminary hearing, pursuant to 30 V.S.A. §§ 10 and 248(k), on VELCO's October 18 Petition, to be held on October 26, 2005.<sup>2</sup>

On October 25, 2005, the Vermont Department of Public Service ("Department") filed a response to VELCO's petition. The Department contends that no relief need be granted because VELCO is already authorized to proceed as it has requested. The Department asserts that, under the terms of the January 28, 2005, Order in this Docket, VELCO may start construction upon Board approval of final plans and receipt of all required permits. In the alternative, the Department contends that Section 248(k) does not apply, and relief should instead be fashioned under other authority; the Department suggests that the Board might exercise its continuing authority over the post-certification proceedings to reduce the four-week comment period to one week. The Department also asserts that the Board need not hold a hearing on VELCO's October 18 Petition.

On October 25, VELCO submitted a letter supporting the Department's position that VELCO is already authorized to proceed as it has requested. VELCO also "support[s] the DPS request to cancel the hearing, provided that the Board affirms the DPS interpretation of the [January 28] Order."

On October 25, the Board informed the parties that the preliminary hearing had been postponed, and would be rescheduled to November 18, 2005, if needed. The Board also requested the parties to file comments, by November 4, 2005, in response to the Department's and VELCO's October 25 filings.

No further comments were filed until November 7, 2005, when VELCO filed a letter noting that no party had filed comments by the November 4 deadline, and that no party (other

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2. 30 V.S.A. § 248(k)(2) provides that "[u]pon receiving the [Section 248(k)] petition, the board shall conduct an expedited preliminary hearing, . . ."

than the Department) had filed comments on the October 18 Petition. VELCO requests that the Board issue a ruling confirming that VELCO is authorized to proceed with site preparation and construction upon receipt of all permits and approvals. VELCO further proposes that the Board so act without a hearing.

### **Discussion**

We have carefully considered VELCO's request, the Department's and VELCO's filings, the applicable statutory provisions, and our prior orders, and we reach the following conclusions. First, VELCO's October 18 Petition does not present a request that is within the scope of Section 248(k). That statutory provision authorizes the Board to:

waive, for a specified and limited time, the prohibitions upon site preparation for or construction of an electric transmission facility contained in this section, pending full review under this section.<sup>3</sup>

As the Department correctly observes, the "prohibitions" to which Section 248(k) applies are the prohibitions against site preparation and construction without first obtaining a Certificate of Public Good ("CPG"). Here, VELCO is not seeking a waiver of the statutory prohibitions on site preparation and construction without a CPG. VELCO has already received a CPG for the Northwest Reliability Project, and is now seeking a waiver of a requirement contained in a Board order. Consequently, VELCO's October 18 Petition is not a proper filing under Section 248(k), and the requirements of that subsection (including the requirement that the Board hold an expedited preliminary hearing) do not apply.

Next, we turn to the Department's and VELCO's contention that VELCO is already authorized to commence construction activities once it receives Board approval of final plans and all required permits, notwithstanding the default four-week period for comments upon and challenges to those permits. Our January 28 Order includes a condition indicating such an authorization.<sup>4</sup> However, that Order also established a post-certification review process in which "[a]ny party, municipal and regional organization, or landowner who believes that the [permits] raise a significant issue that should be addressed through evidentiary hearings may request a

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3. 30 V.S.A. § 248(k)(1).

4. Order of 1/28/05 at 226; *see also* CPG of 1/28/05 at 1.

hearing on that issue."<sup>5</sup> The Order required the petitioners to submit a proposed schedule for filing permits, with the schedule subject to comments by the parties and approval by the Board.<sup>6</sup>

VELCO filed its proposed schedule on April 18, 2005, and a revised schedule on June 2, 2005. In an Order entered June 8, 2005, we conditionally approved VELCO's June 2 proposal. Significantly, our approval included the following, unambiguous language:

We make clear that final approval of all plans for a given area is not possible until all permits have been received and the parties, affected municipal and regional governmental bodies, and affected landowners have an opportunity to submit comments and, if appropriate, request a hearing.<sup>7</sup>

Thus, while the Department and VELCO are technically correct in asserting that VELCO is already authorized to begin construction activities once it receives Board approval of final plans and all required permits, they fail to acknowledge the Board's statement that it will not approve the plans until after parties and other affected persons and entities have had the opportunity to comment on and challenge the permits.

Given the construction scheduling difficulties and reliability concerns raised by VELCO, and the lack of any opposition to VELCO's October 18 Petition, we conclude that some relief is warranted. The Department's proposal to reduce the four-week comment period to one week provides a sensible resolution. It substantially reduces the waiting period prior to final Board approval while retaining the parties' right to challenge those permits upon which VELCO has relied for rebuttable presumptions.<sup>8</sup> Moreover, no party has filed comments opposing this reduction in the comment period. For these reasons, we adopt the Department's proposal. Thus,

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5. Order of 1/28/05 at 217.

6. *Id.* at 216, 227–27; *see also* CPG of 1/28/05 at 2.

7. Order of 6/8/05 at 2, footnote omitted.

8. In our January 28 Order, we stated:

For some of the required permits, the responsible agency issues draft permits for public comment prior to the issuance of a final permit. This comment period could provide parties an opportunity to raise issues regarding necessary permits and, in the interests of efficiency, we encourage parties to utilize the agency's process to address any concerns with a permit.

Order of 1/28/05 at 217. For such permits, parties have thus had substantially more than one week to raise concerns, if they were so inclined.

for the New Haven substation and the 345 kV line, the period for challenging the rebuttable presumption — by filing an offer of proof — and for filing any other comments shall be one week from the date that the permits are filed with the Board. To accommodate this shortened comment period, we hereby require VELCO to make available its permit applications upon request of any party, affected municipal or regional governmental entity, or affected landowner.<sup>9</sup>

**Notice of Hearing Cancellation**

For the reasons set forth above, the preliminary hearing that we tentatively rescheduled for November 18, 2005, is hereby canceled.

SO ORDERED.

DATED at Montpelier, Vermont, this 10<sup>th</sup> day of November, 2005.

_____)	PUBLIC SERVICE  BOARD  OF VERMONT
_____)	
s/David C. Coen _____)	
_____)	
s/John D. Burke _____)	

OFFICE OF THE CLERK

Filed: November 10, 2005

Attest: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

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9. In its October 18 Petition, VELCO asks for the opportunity to develop a plan for distributing the permit applications, due to the voluminous nature of some. We do not require VELCO to file a formal plan for distributing the applications, but instead require VELCO and any requesting person or entity to make good-faith efforts to coordinate the review of the applications. (To provide some guidance, we anticipate that provision of electronic copies could satisfy VELCO's obligation in most circumstances, to the extent that the materials are available in electronic format.) Any disputes concerning the manner in which the permit applications are made available may be brought to the Board for resolution by a Hearing Officer.